IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO.15 OF 2005

Bhagwan Krishna Hari Boda & ors. Petitioners

Vs.

Smt. Dropadi Devi widow of
Vijaykumar Chamadia Respondent

Mr.R.S.Datar for petitioners.

Mr.P.N.Karlekar for respondent.

CORAM: B.H.MARLAPALLE,J.
August 08, 2005.

ORAL ORDER:

1. Heard Mr.Datar, the learned counsel for the petitioners and Mr.Karlekar, the learned counsel for the respondent who is the appellant before the lower Appellate Court. The petitioners-plaintiffs had instituted RCS No.597 of 2000 which came to be decreed by the judgment and order dated 23-4-2002 passed by the learned Civil Judge Junior Division, Bhiwandi. The said decree was ex-parte and the decree was challenged by filing an appeal which was beyond limitations. Misc. Application No.64 of 2003 came to be filed by the defendant for condonation of delay under Section 5 of the Limitations Act, on or

about 25th March 2003. It was contended by the defendant-appellant that she was on foot pilgrimage from January 2001 to January 2003 i.e. for about two years and during this period the suit room in Block No.17 of M.H.No.200, Bondayya Building, Varaladevi Road, Dhamankar Naka, Bhiwandi was locked. When she returned to Bhiwandi on 30-1-2003 she came to know that the suit was decreed and the possession of the suit room was taken over by the landlord on 20-1-2003. She applied for the certified true copy of the decree on 30-1-2003 and the same was issued to her on 6-2-2003. She contended that she got the knowledge of the decree for the first time on 30-1-2003 and, therefore, the appeal filed on 25-3-2003 was within the limitations. This application was opposed by filing say by the plaintiffs. It was contended that the suit room was locked by the defendant and she was not on any pilgrimage as such but was staying from time to time with her sons and daughters. The defendant-appellant stepped in the witness box before the lower Appellate Court and reiterated that she was on foot pilgrimage from January 2001 to January 2003. In her cross-examination she was asked to produce the documentary proof to which she stated that she had no

such proof. A person on foot pilgrimage would not have any documents regarding travel etc. and the appellant had stated that during this pilgrimage she visited several places and did not have any permanent abode. The trial Court has accepted the contentions of the appellant that she was on a pilgrimage for about two years and was not staying at Bhiwandi when the decree was passed or the decree was executed. The view taken by the trial Court is a possible view and it cannot be termed as an error apparent on the face of the record so as to allow this revision application.

2. At the same time the lower Appellate Court has taken an equitable view by directing to deposit arrears of rent and cost of the suit as per the order passed in RCS No. 597 of 2000. Mr.Karlekar, the learned counsel for the defendant has placed on record a receipt to show that an amount of Rs.31,500/- has been deposited with the Court below by the appellant on 23-9-2004 and thus the condition set out for condoning the delay has been fulfilled.

3. In the premises this revision application is rejected summarily and the trial of the pending

appeal is directed to be expedited. The appeal be decided as expeditiously as possible and preferably within a period of six months.

(B.H.MARLAPALLE,J.)